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CABINET NOTE

TO: THE PREMIER FOR CABINET TO NOTE

RE: SUBMISSION TO THE FEDERAL GOVERNMENT'S REVIEW OF ACCESS TO ABORIGINAL OWNED LAND UNDER THE NORTHERN TERRITORY ABORIGINAL LAND RIGHTS ACT

1. PROPOSAL

- 1.1 That Cabinet notes the **South Australian Government's** submission to the Federal **G**overnment's review of access to Aboriginal land under the Northern Territory Aboriginal Land **R**ights Act.

2. BACKGROUND

- 2.1 On 12 **S**eptember 2006 the Federal Minister for Families, Community Services and Indigenous Affairs, the Hon Mai Brough, announced a review of the permit system that regulates entry onto Aboriginal owned land in the Northern Territory. The Federal **G**overnment believes the permit system is anachronistic and contributes to Aboriginal disadvantage.
- 2.2 The Commonwealth Aboriginal Land Rights Act (**Northern Territory**) establishes the permit system.
- 2.3 To coincide with the announcement, the Federal **G**overnment released a discussion paper calling for submissions about the review.
- 2.4 The chief purpose of the discussion paper is to seek feedback on a range of options for altering the current arrangements for entering Northern Territory Aboriginal land. Page 8, however, states that the Northern Territory is not the only jurisdiction with a 'restrictive system of access to Aboriginal land' and that 'other jurisdictions will be encouraged' to modify their State-based legislation governing access arrangements. It is this issue that the **South Australian Government's** submission addresses.

3. DISCUSSION

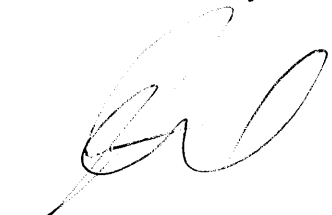
- 3.1. The *Anangu Pitjantjatjara (APY) Land Rights Act 1981* and the *Maralinga Tjarutja (MT) Land Rights Act 1984* contain provisions requiring non-traditional owners to obtain a permit to enter these Aboriginal owned lands.
- 3.2. The permit systems were included in the APY and MT land rights legislation at the time of drafting. They were included to help preserve the culture and heritage of the traditional owners, to safeguard the natural environment and to promote visitor safety.

- 3.3. The attached submission (Attachment A) sets out the South Australian Government's position regarding the permit systems.
- 3.4. It is the Government's view that the permit systems for accessing the APY and MT lands are working well. The Government is not persuaded that there is any need for change at this time along the lines proposed for the Northern Territory by the Federal Government.
- 3.5. It is also clear from discussions with APY and MT that they want the permit systems to remain in their current form.
- 3.6. The federal Government's main argument for changing the Northern Territory permit system is that it has created closed communities that are removed from external scrutiny. The Commonwealth believes that this has contributed to crime and violence and retarded economic development.
- 3.7. Information about permit applications provided by APY and MT does not support the 'closed community' argument (see Attachment A) in South Australia. Also, at no time during discussions with either APY or MT have the traditional owners said they believe the permit system is linked to crime in these communities or that it is hampering economic growth.

4. RECOMMENDATION

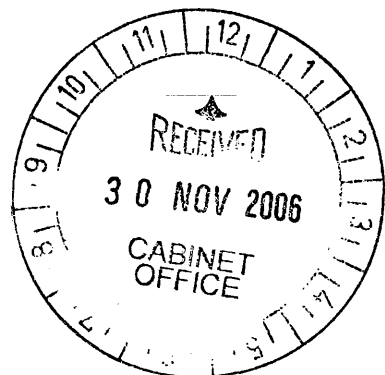
That Cabinet notes:

- 4.1 The South Australian Government's submission to the Federal Government's review of access to Aboriginal land under the Northern Territory Aboriginal Land Rights Act.



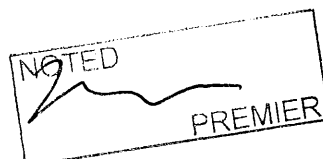
Hon Jay Weatherill MP
Minister for Aboriginal Affairs and Reconciliation

30/11/2006



In Cabinet

- 4 DEC 2006



**SUBMISSION TO THE
AUSTRALIAN GOVERNMENT'S REVIEW OF
ACCESS TO ABORIGINAL LAND UNDER THE
NORTHERN TERRITORY
ABORIGINAL LAND RIGHTS ACT**

Hon Jay Weatherill MP
**MINISTER FOR ABORIGINAL AFFAIRS AND
RECONCILIATION**

November 2006

INTRODUCTION

On 12 September 2006 the Minister for Families, Communities and Indigenous Affairs, the Hon Mai Brough MP, announced a review of the Commonwealth legislation (*Aboriginal Land Rights Act (NT) Act 1976*) that establishes the permit system regulating entry onto Aboriginal land in the Northern Territory.

A discussion paper was released to coincide with Minister Brough's announcement. The chief purpose of the paper is to seek feedback on a range of options proposed by the Australian Government for a new system for accessing Northern Territory Aboriginal lands. However, page 8 of the discussion paper states:

The ALRA permit system is not the only restrictive system of access to Aboriginal land in Australia. Depending on the outcome of this review process, other jurisdictions will be encouraged to follow the Australian Government's example (*Access to Aboriginal Land under the Northern Territory Aboriginal Land Rights Act – Time for Change, 2006, p. 8*).

In South Australia permit systems regulate entry by non-traditional owners to the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands and the Maralinga Tjarutja (MT) Lands. The purpose of this submission is to outline the South Australian Government's position regarding these permit systems.

SOUTH AUSTRALIAN PERMIT SYSTEMS FOR ABORIGINAL OWNED LAND

The *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* and the *Maralinga Tjarutja Land Rights Act 1984* contain provisions prohibiting non-traditional owners from entering these Aboriginal owned lands without permission.

These permit systems are described below.

Anangu Pitjantjatjara Yankunytjatjara Lands Rights Act

Pursuant to Part 3, Division 2, of the APY Land Rights Act, it is necessary for non-Anangu persons to obtain a permit to enter the APY Lands.

To obtain a permit it is necessary to apply in writing to the Executive Board, specifying the purpose and duration of the visit and the area to be visited. As required by the Act, there is an application fee, which is currently \$22 per person. On receipt of the application and the prescribed fee, the APY may grant unconditional entry, entry with conditions, or refuse entry. Applicants are notified in writing about the outcome of their applications.

A person who knowingly enters the APY Lands without a permit can be fined up to \$2000 plus \$500 for each day spent unlawfully on the Lands. Accidental unauthorised entry carries a maximum penalty of a \$200 fine.

There are three permit types:

1. General
2. Employee/contractor
3. Media.

General permits are for short term visits to the Lands. Applicants are sent a form by the Permits Officer at the APY Land Council office along with general information about permit conditions. The completed form and fee are returned to the Permits Officer who then makes a determination about whether or not to issue a permit after consulting the relevant APY community/ies.

Employee/contractor permits are for up to 12 months at a time. Application procedures are similar to those for the general permits except for the additional requirement that applicants must undergo a police check. A temporary three-month permit is issued pending the receipt of a National Police Clearance Certificate, which typically takes 8 weeks to process. Applicants pay the cost of the clearance certificate.

Applications for media permits are the same as above except that applications are referred to PY Media, which advises the APY Permits Officer whether a permit should be issued. There are additional costs associated with media access to the Lands, determined by and payable to PY Media (e.g., costs for major film projects, commercial still photography and sound recording, fees for supervising film crews and commercial photographers).

The following conditions apply to APY entry permits:

- Permittees must comply at all times with by-laws made pursuant to the APY Land Rights Act.
- The permit does not authorise the entry of any person to a dwelling or living area of a camp occupied by or belonging to an Anangu without the consent of the owner or occupant.
- Issue of the permit does not imply that notice of intention to visit the Aboriginal land specified has been served upon the Traditional Owners concerned. The permittee is responsible to ensure that Aboriginal communities are informed of their intention to visit.
- The permit is valid only to enable the permittee to perform the duties associated with their visit.
- The permit must be carried at all times while the holder is on the Lands and produced for inspection on demand.
- The permittee must comply with any laws currently in force concerning the sale and possession of liquor on the Lands.
- The permit may be revoked at any time.

- In the event of the revocation of a permit or it's ceasing to be valid for any reason, the permittee shall immediately leave the APY Lands.
- Executive members and the APY Field Officer may inspect permits and may at any time give direction to permit holders in relation to their conduct and activities on the Lands.
- Permittees are not to:
 - engage in any private commercial activities
 - remove any flora, fauna or rocks
 - leave established roads without the express consent of the appropriate Traditional Owner or their representative.
- Permittees are to check at all times with local authorities or Traditional Owners regarding the taking of photographs or making of videos.

There are certain classes of non-Anangu who are exempt from the permit requirement. These are specified in s. 19(8) of the APY Land Rights Act and include police officers carrying out official duties, any other officer appointed pursuant to statute carrying out official duties, the Electoral Commissioner, a person authorised by the Minister for Aboriginal Affairs, a member of the State or Commonwealth Parliament, and a person entering the lands due to an emergency.

Maralinga Tjarutja Land Rights Act

Except for traditional owners and certain other categories of person (described below), a permit is also required to enter the Maralinga Tjarutja Lands. The operation of the permit system is set out in Division 3 of the *Maralinga Tjarutja Land Rights Act 1984*. Section 18(1) of the MT Land Rights Act makes it an offence for non-traditional owners to enter the lands without the permission of MT.

Like the APY Land Rights Act, a non-exempt person wishing to visit the MT Lands must apply in writing to the MT Council, specifying the area to be visited and the purpose and duration of the visit. On receipt of the application, MT may grant conditional or unconditional entry, or refuse entry altogether. Applications are processed in a similar way to that described above for the APY Lands.

Section 18(11) sets out the categories of person who do not need a permit to enter the MT Lands. It exempts a greater range of persons than the equivalent provisions in the APY Land Rights Act. The list includes police officers carrying out official duties, any other officer appointed pursuant to statute carrying out official duties, a person authorised by the Minister for Aboriginal Affairs, a member of the State or Commonwealth Parliament, an Aboriginal person entering the lands at the invitation of a traditional owner, and a person entering the lands due to an emergency.

A person who knowingly enters the MT Lands without a permit can be fined up to \$2000 plus \$500 for each day spent unlawfully on the Lands. Accidental unauthorised entry carries a maximum penalty of a \$200 fine.

Land owned by the Aboriginal Lands Trust (ALT)

The **South Australian Aboriginal Lands Trust** is a statutory land holding body under the *Aboriginal Lands Trust Act 1966 (SA)*. It is responsible for the administration and management of land held on behalf of Aboriginal **South** Australians. ALT land cannot be sold without the approval of both **Houses** of the **South Australian Parliament**.

Land held by the Trust is leased back to the local Aboriginal communities and organisations for ninety-nine years, with repeated rights of renewal. It is currently responsible for about 70 properties throughout the **State**. The major ALT communities are Yalata, Gerard, Koonibba, Davenport, **Nepabunna**, Point Pearce, **Raukkan** and **Umoona**.

The ALT Act, which predates the APY and MT legislation, does not contain a provision prohibiting non-Aboriginal people from entering lands held by the Trust. The occupiers of lands held by the Trust have the same rights as other occupiers of land to request unauthorised persons to leave their land, and to enforce their rights of exclusive occupation by means of an injunction. In addition, unauthorised persons who fail to leave ALT land when requested by an authorised person may be prosecuted for trespassing pursuant to s 17A of the *Summary Offences Act 1953 (SA)*.

SOUTH AUSTRALIAN GOVERNMENT'S POSITION ON THE PERMIT SYSTEMS

It is the position of the **South Australian Government** that the APY and MT permit systems are working well. The Government is not persuaded there is any need for changes along the lines proposed by the Australian Government for the **Northern Territory**.

The permit systems were included in the APY Land Rights Act and the MT Land Rights Act at the time the legislation was drafted. They are an inextricable part of the land rights granted to Anangu and Maralinga Tjarutja. They were included to help preserve Aboriginal culture and heritage, to safeguard the natural environment and to promote visitor safety. To undermine the permit systems as the Australian Government is proposing would be to violate the traditional owners' land rights.

It is also the **South Australian Government's** view that land rights are essentially property rights. In general, governments seeking to interfere with citizens' property rights need to satisfy a high burden of proof and should do so only when no reasonable alternative exists. In this instance changes need to be by agreement.

The Australian Government's principal argument for changing the permit system in the **Northern Territory** is that it has created closed communities that are not open to external scrutiny. In particular it states that restricted media access has created a 'monopoly of silence'.

Data from the APY lands and the MT lands indicate that is not the case in South Australia.

Information provided by the General Manager of APY shows that in 2004-05 there were 2022 permit applications to enter the APY lands and in 2005-06 there were 1858 applications. Out of this total of 3880 applications for permits, three, or less than 0.1%, were refused. Twenty-six of the permit applications were from the news media and none of these applications was refused. Of the three applications that were not approved, one was from an individual whose criminal history check showed grounds for not granting a permit, another was from a person who wanted to visit sacred sites that the Executive Board of APY believed it was not appropriate for that person to visit, and the third was a person whom the Executive Board believed was likely to take advantage of Anangu.

Maralinga Tjarutja received 523 permit applications in 2004-05 and 493 in 2005-06. Three of the applications were from the news media. None of the 1116 applications were refused.

It is clear from discussions with APY and MT that they want the permit systems to remain in their current form. The issue was recently discussed at length in relation to amendments to the APY Land Rights Act. The APY Executive Board, which comprises the elected representatives of the traditional owners, wrote to South Australian Parliamentarians stating their strong support for the permit system and asking that it not be altered.

MT and APY believe the purpose of the permit system is not to prevent access to their lands but to ensure access is controlled, and for good reason. There are parts of the MT and APY lands that contain sacred sites and access to these areas needs to be regulated to ensure the sites are not damaged. At certain times of the year particular areas are used for traditional ceremonies and it is not appropriate for non-traditional owners to visit these places then. For reasons of personal safety, such as in the event of an accident or an emergency breakdown, it is important for MT and APY to know who is on the lands and their location.

At no time during discussions with either MT or APY have the traditional owners told the South Australian Government that they consider the permit systems are contributing to family violence or crime in their communities. Nor have we received evidence that community members disagree with their elected representatives or believe the system is being abused. Nor has there been any comment or evidence that economic development is being retarded by the permit systems.

CONCLUSION

The South Australian Government believes that the permit systems for accessing the MT lands and the APY lands are working well and in the

manner intended. The Government has no plans to change the permit arrangements.

Nor are any changes wanted by the traditional owners, who believe the permit systems are needed to help preserve Aboriginal culture and heritage, to safeguard the natural environment and to ensure visitor safety.

There is no evidence in South Australia that the permit systems have created closed communities that are removed from external scrutiny. In the two years from 1 July 2004 to 30 June 2006 MT received over 1100 permit applications and none of the applications were refused. In the same period APY received nearly 4000 permit applications and only three, or 0.1%, were denied. All applications from the news media were approved.

Central to the Australian Government's argument for changing the system for entering Northern Territory Aboriginal land is that the permit system has contributed to family violence and reduced economic development because it restricts access. There is no evidence in South Australia that the MT and APY permit schemes have increased the incidence of crime and violence in these communities. Nor is there evidence that having permits has prevented these communities from participating in the mainstream South Australian economy.

The South Australian Government is committed to working in partnership with the MT and APY communities. It has not been approached by the traditional owners to change the current permit arrangements. Until such time as the Government receives such a request or is presented with credible evidence that the permit system is being used in a manner harmful to MT or APY community members, the government can see no reason to change the current access arrangements.

The South Australian Government will continue to monitor the operation of the permit systems.